

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: June 28, 2021

* * * * *	*	UNPUBLISHED
TRACY GOODSPEED,	*	
	*	
Petitioner,	*	No. 16-1609V
	*	Special Master Oler
v.	*	
	*	Attorneys' Fees and Costs
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
* * * * *		

Richard Gage, Richard Gage, P.C., Cheyenne, WY, for Petitioner.

Debra A. Filteau Begley, United States Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

On December 5, 2016, Tracy Goodspeed ("Petitioner") filed a petition for compensation pursuant to the National Vaccine Injury Compensation Program² alleging that she suffered from a left shoulder injury related to vaccine administration as a result of the influenza vaccination she received on January 16, 2014. Pet. at 1. On March 23, 2021, the parties filed a stipulation, which the undersigned adopted as her decision awarding compensation on March 24, 2021. (ECF No. 57).

On April 5, 2021, Petitioner filed an application for final attorneys' fees and costs. (ECF No. 61). ("Fees App."). Petitioner requests total attorneys' fees and costs in the amount of \$37,035.95, representing \$36,240.20 in attorneys' fees and \$795.75 in attorneys' costs. Fees App. at 2. Pursuant to General Order No. 9, Petitioner states that she has not incurred any costs related

¹ The undersigned intends to post this Ruling on the United States Court of Federal Claims' website. **This means the Ruling will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755.

to this litigation. Fees App. at 66. Respondent failed to file a response within the allotted time.

This matter is now ripe for consideration.

I. Reasonable Attorneys' Fees and Costs

Section 15(e) (1) of the Vaccine Act allows for the Special Master to award “reasonable attorneys' fees, and other costs.” § 300aa–15(e)(1)(A)–(B). Petitioners are entitled to an award of reasonable attorneys' fees and costs if they are entitled to compensation under the Vaccine Act, or, even if they are unsuccessful, they are eligible so long as the Special Master finds that the petition was filed in good faith and with a reasonable basis. *Avera v. Sec'y of Health & Human Servs.*, 515 F.3d 1343, 1352 (Fed. Cir. 2008). Here, because Petitioner was awarded compensation pursuant to a stipulation, she is entitled to a final award of reasonable attorneys' fees and costs.

It is “well within the special master's discretion” to determine the reasonableness of fees. *Saxton v. Sec'y of Health & Human Servs.*, 3 F.3d 1517, 1521–22 (Fed. Cir. 1993); *see also Hines v. Sec'y of Health & Human Servs.*, 22 Cl. Ct. 750, 753 (1991). (“[T]he reviewing court must grant the special master wide latitude in determining the reasonableness of both attorneys' fees and costs.”). Applications for attorneys' fees must include contemporaneous and specific billing records that indicate the work performed and the number of hours spent on said work. *See Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313, 316–18 (2008).

Reasonable hourly rates are determined by looking at the “prevailing market rate” in the relevant community. *See Blum v. Stenson*, 465 U.S. 886, 895 (1984). The “prevailing market rate” is akin to the rate “in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.” *Id.* at 895, n.11. The petitioner bears the burden of providing adequate evidence to prove that the requested hourly rate is reasonable. *Id.*

a. Reasonable Hourly Rates

Petitioner requests the following hourly rates for the work of her counsel: for Mr. Richard Gage, \$311.00 per hour for work performed in 2016, \$318.00 per hour for work performed in 2017, \$326.00 per hour for work performed in 2018, \$338.00 per hour for work performed in 2019, \$350.00 per hour for work performed in 2020, and \$362.00 per hour for work performed in 2021; and for Ms. Kristen Blume, \$251.00 per hour for work performed in 2016–2018, \$338.00 per hour for work performed in 2019, and \$350.00 per hour for work performed in 2020. These rates are consistent with what Mr. Gage and Ms. Blume have previously been awarded for their Vaccine Program work and I find them to be reasonable herein.

b. Reasonable Hours Expended

Attorneys' fees are awarded for the “number of hours reasonably expended on the litigation.” *Avera*, 515 F.3d at 1348. Counsel should not include in their fee requests hours that are “excessive, redundant, or otherwise unnecessary.” *Saxton*, 3 F.3d at 1521 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). Additionally, it is well-established that billing for administrative/clerical tasks is not permitted in the Vaccine Program. *Rochester v. United States*,

18 Cl. Ct. 379, 387 (1989); *Arranga v. Sec'y of Health & Human Servs.*, No. 02-1616V, 2018 WL 2224959, at *3 (Fed. Cl. Spec. Mstr. Apr. 12, 2018).

The overall hours spent on this matter appear to be largely reasonable. However, the undersigned notes that counsel included entries that are duplicative and excessive due to attorneys and paralegals billing for reviewing the same orders and attending the same conferences/office meetings. This issue has previously been noted concerning work by Mr. Gage's firm. *See Fairchild v. Sec'y of Health & Human Servs.*, No. 13.487V, 2020 WL 2467078 (Fed. Cl. Spec. Mstr. Apr. 13, 2020). Upon review, a reasonable reduction for these hours is \$600.00, which shall be reduced from the final award of fees.

c. Attorneys' Costs

Like attorneys' fees, a request for reimbursement of attorneys' costs must be reasonable. *Perreira v. Sec'y of Health & Human Servs.*, 27 Fed. Cl. 29, 34 (Fed. Cl. 1992). Petitioner requests a total of \$795.75 in attorneys' costs. Fees App. Ex. 2. This amount is comprised of acquiring medical records, photocopies, postage, and the Court's filing fee. All of these costs are typical of Vaccine Program litigation and are reasonable in the undersigned's experience and Petitioner has provided adequate documentation supporting the request. Petitioner is therefore awarded the full amount of costs requested.

II. Conclusion

In accordance with the Vaccine Act, 42 U.S.C. § 300aa-15(e) (2012), the undersigned has reviewed the billing records and costs in this case and finds that Petitioner's request for fees and costs is reasonable. The undersigned finds that it is reasonable to compensate Petitioner and her counsel as follows:

Attorneys' Fees Requested	\$36,240.20
(Reduction to Fees)	- (\$600.00)
Total Attorneys' Fees Awarded	\$35,640.20
Attorneys' Costs Requested	\$795.75
(Reduction to Costs)	-
Total Attorneys' Costs Awarded	\$795.75
Total Amount Awarded	\$36,435.95

Accordingly, the undersigned awards a lump sum in the amount of \$36,435.95, representing reimbursement for reasonable attorneys' fees and costs, in the form of a check payable jointly to Petitioner and Petitioner's counsel of record, Mr. Richard Gage.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court shall enter judgment in accordance herewith.³

IT IS SO ORDERED.

s/ Katherine E. Oler

Katherine E. Oler

Special Master

³ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. Vaccine Rule 11(a).